



1 the arguments asserted in support of Forrester's Appeal are without merit.

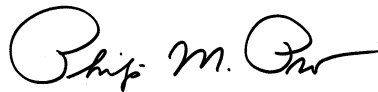
2 This Court reviews a claim of insufficient evidence *de novo*. United States v.  
3 Stanton, 501 F.3d 1093, 1099 (9th Cir. 2007). "The evidence is sufficient to support  
4 a conviction if, viewing the evidence in the light most favorable to the prosecution,  
5 *any* rational trier of fact could have found the essential elements of the crime beyond  
6 a reasonable doubt." United States v. Mincoff, 574 F.3d 1186 (9th Cir. 2009).

7 The Court has conducted a *de novo* of the trial proceedings before Magistrate  
8 Judge Leavitt. (Doc.'s #20, 21, 23, and 24). The Court finds that the evidence  
9 adduced was sufficient to support the verdict that Forrester's BAC was greater than  
10 0.08 Grams. Therefore the record support's Magistrate Judge Leavitt's findings of  
11 Forrester's guilt as to Count Two.

12 The Court further finds that the record does not support Forrester's argument  
13 that Magistrate Judge Leavitt abused his discretion in admitting into evidence the  
14 results of breath samples obtained from Forrester. Finally, this Court rejects  
15 Forrester's argument that 36 CFR § 4.23(a)(2) requires a conversion from the results  
16 of breath alcohol test results to blood alcohol content.

17 **IT IS THEREFORE ORDERED** that the Judgment of the Magistrate Judge  
18 is **AFFIRMED**.

19  
20 DATED: October 21, 2010.

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23 PHILIP M. PRO  
24 United States District Judge  
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